

## The Legal News.

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### LOCAL AND FEDERAL JURISDICTION.

We have before us the opinion of the Judicial Committee of the Privy Council in appeals from the Supreme Court in two cases: one against the Citizens Insurance Company of Canada, and the other against the Queen Insurance Company. The decision is, in some respects, one of the most important of the kind that has been rendered. In speaking of the difficulty of reconciling, in some cases, sections 91 and 92 of the B.N.A. Act, their Lordships say: "In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide in each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand." If these words of counsel are taken in their naked sense, they express a truism. It may be taken for granted that courts and judges will decide as best they can, and it hardly seems necessary to warn them of the inconvenience of *obiter dicta*. But if their Lordships mean to convey by their homely advice, that because the limits of the powers conferred by the B. N. A. Act on the Dominion and Local Legislatures give rise to serious difficulty, therefore those who are called upon to define them are not to seek for a guide in the general spirit of the Act, or in general reasoning, then we must demur to the soundness of the admonition. At any rate their Lordships find the impossibility of adhering to such a doctrine, for a few sentences further they say: "It becomes obvious, as soon as an attempt is made to construe the general terms in which the classes of subjects in sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication, or reasonable intentment, be modified and limited." If it be possible to make a distinction between the mode of interpreting one statute and another, we should think that a statute which gives a constitution to a people should be dealt with in a

wider and more comprehensive manner than an ordinary act. It has a well-considered policy and a history, and if we are to have each test case decided on the narrowest view of its merits, generations may pass away before we have any certainty as to whether any law on our statute-books is within the powers of the Legislature by which it was passed. It is precisely because the Judicial Committee has taken a wide view of the terms of the act in the decision in question, that it has a value, perhaps, greater than any of its predecessors. Their Lordships begin with a discussion as to the scheme of legislation of the Imperial Parliament with regard to the distribution of legislative powers between the Dominion Parliament and the Local Legislatures. They point out that by the first branch of section 91, the former has a general authority to make laws *not* coming within classes of subjects exclusively assigned to the latter. They then proceed to explain the difficulty arising from the double enumeration of exclusive powers, and the effort made to obviate the inconveniences to which, it was apparent, it might otherwise give rise. They say: "If the 91st section had stopped here, and\* if the classes of subjects enumerated in section 92 had been altogether distinct and different from those in section 91, no conflict of legislative authority could have arisen. The Provincial Legislatures would have had exclusive legislative power over the 16 classes of subjects assigned to them, and the Dominion Parliament exclusive power over all other matters relating to the good government of Canada. But it must have been foreseen that this sharp and definite distinction had not been and could not be attained, and that some of the classes of subjects assigned to the Provincial Legislatures unavoidably ran into and were embraced" (*i. e.* to some extent?) "by some of the enumerated classes of subjects in section 91; hence an endeavour appears to have been made to provide for cases of apparent conflict, and it would seem that with this object it was declared in the second branch of the 91st section, 'for greater certainty, but not so as to restrict the generality of the foregoing terms of the section,' that (notwithstanding anything in the act) the exclusive legislative authority of the Parliament of Canada should extend to all matters coming within the classes of subjects

\* Probably "or."